IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24935 of 2006
With
SPECIAL CIVIL APPLICATION No. 24936 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHANABHAI VADHABHAI KUMBHAR & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MEHUL SHARAD SHAH for Petitioner(s) : 1 - 2.
MR SATYAM CHAYYA, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 05/12/2006

ORAL JUDGMENT

1. Rule. Mr. Chayya, learned AGP appearing for the respondents waives service of rule.

2. With consent of the learned advocate appearing for both the sides, the matter is further heard.

3. The learned advocate appearing for the petitioners and the learned AGP have no objection if the petition is considered for legality and validity of the order passed by the Collector, more particularly qua the observance of principles of natural justice.

4. Upon hearing the learned advocates appearing for both the sides, it appears that there is no dispute that the order passed by the Collector dated 30.05.2006, Annexure-D, which is subject matter of the revision before the State Government is passed without giving opportunity of hearing and therefore, the same as such cannot be sustained in the eye of law. However, as the revision is pending before the State Government and the petitioners have approached to this Court at a stage of Exhibit 5-stay application, the learned counsel appearing for the petitioners declare before the Court that if the order passed by the Collector is quashed on the ground of breach of principles of natural justice and if the opportunity is given to the petitioners, as may be directed by this Court, the petitioners would withdraw the revision before the State Government and shall abide by the direction. Mr. Chayya, learned AGP has no objection if such a course is being adopted.

5. Under these circumstances, I find that when no opportunity of hearing has been given to the petitioners, the order dated 30.05.2006 passed by the District Collector even otherwise cannot be sustained in the eye of law on the ground of non-observance of the principles of natural justice and therefore, upon declaration of the petitioners that the petitioners shall withdraw the revision application before the State Government and compliance thereof within one week, the order passed by the Collector dated 30.05.2006, Annexure-D which is impugned in this petition is quashed and set aside with observation that it will be open for the Collector to issue formal show cause notice to the petitioners and the petitioners may submit reply properly and after giving opportunity of hearing, an order may be passed in accordance with law. It is clarified that the rights and contentions of both the sides including of the petitioners on the ground of delay or altering his position etc. shall remain open.

6. Rule made absolute to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs. D.S. permitted.

(JAYANT PATEL, J.)

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